

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**WELLMAN DYNAMICS CORP.,
A wholly-owned subsidiary of Fansteel**

ADMINISTRATIVE CONSENT ORDER

NO. 2008-WW-05

TO: CT Corporation System
Registered Agent for Wellman Dynamics Corp.
2222 Grand Avenue
Des Moines, IA 50312

Wellman Dynamics Corp.
Steve Bradley
Safety & Environmental Mgr.
1746 Commerce Road
Creston, Iowa 50801

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Wellman Dynamics Corp. (Wellman) for the purpose of resolving the issues surrounding a prohibited discharge at the Wellman facility in Creston, Iowa that resulted in a fish kill. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Dan Stipe, DNR Field Office #4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/653-1934

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa

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Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Wellman operates a facility in Creston, Iowa that manufactures aluminum and magnesium sand castings. Wellman also operates an industrial landfill located on the east side of its Creston plant. The site is used for disposal of reclaimed foundry sand waste, baghouse or dust collector waste, and treated magnesium dross waste generated by the Wellman facility. Wellman has a Treatment Agreement with the City of Creston Waste Water Treatment Plant (WWTP) that allows proper discharge of a single drain protection leachate and industrial waste.

2. On November 1, 2007, DNR Field Office 4 received a complaint from Creston's WWTP superintendent reporting that a discharge of a fluorescent green dye from Wellman's facility had passed through the WWTP and into a tributary for the West Platte River. Creston's WWTP reported that during its investigation of the discharged material, it observed dead fish in the receiving tributary.

3. On November 1 and 2, 2007, Dan Stipe, DNR Field Office 4 supervisor, and Gary Sobotka, DNR Fisheries, investigated the complaint. During the investigation, DNR personnel observed green discoloration in the WWTP's treatment units. This discharge resulted in reduced efficiency at the WWTP. They also observed green discoloration in the receiving tributary and the West Platte River as far as four miles downstream from the WWTP, as well as a substantial amount of dead fish. DNR personnel visited the Wellman facility and were informed that approximately 280 gallons of Zyglo Penetrant dye had been pumped into the sanitary sewer. The DNR staff collected samples upstream and downstream from the discharge as well as from the WWTP. DNR staff also obtained samples of the Zyglo and Zyglo rinsate from the Wellman facility. The results of the samples are as follows:

Samples

Location	BOD	COD	Total CR	Total AG	Total MN	Total ZN
Upstream	3	13	< 0.02	< 0.01	0.14	< 0.02
Zyglo	640000	>1000000	0.71	< 0.01	0.03	1.3
Zyglo rinsate	1800	5200	0.14	< 0.01	0.07	0.11
Creston WWTP raw affluent (grab)	2400	7300	< 0.02	0.015	0.22	0.09
Creston WWTP raw influent	350	1100	< 0.02	0.04	0.23	0.03
Creston WWTP Final Effluent	280	620	0.02	0.02	0.02	0.04
Downstream	69	190	< 0.02	< 0.01	0.06	< 0.02

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4. On November 15, 2007, DNR Fisheries personnel completed their evaluation of the fish kill. The Fisheries personnel concluded that 2,583 fish valued at \$5,924.20 were killed. The costs of performing this evaluation were \$1,110.84. The fish kill assessment totals \$7,035.04.

5. On November 20, 2007, DNR received laboratory results indicating that the discharge was responsible for the fish kill in the receiving tributary and West Platte River. A Notice of Violation letter was issued to Wellman for the prohibited discharge and water quality violations.

IV. CONCLUSIONS OF LAW

1. 567 IAC 62.1(7) provides that wastes in such volumes or quantities as to exceed the design capacity of the treatment works or reduce the effluent quality below that specified in the operation permit of the treatment works are considered to be a waste which interferes with the operation or performance of a publicly owned treatment works or a privately owned domestic sewage treatment works and are prohibited. The Zyglo which was discharged into the Creston sanitary sewer from the Wellman facility reduced the efficiency of the Creston WWTP. The above facts indicate a violation of this provision.

2. 567 IAC 61.3(2)"c" provides general water quality criteria and states all surface waters shall be free from substances attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions. The discharge from the Wellman facility turned the water at the Creston WWTP and receiving tributary an abnormal green color. The above facts indicate a violation of this provision.

3. 567 IAC 61.3(2)"d" provides general water quality criteria and states all surface waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to human, animal, or plant life. The discharge from the Wellman facility resulted in a fish kill in the receiving tributary and the West Platte River. The above facts indicate a violation of this provision.

4. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC chapter 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the discharge at the Wellman facility.

V. ORDER

THEREFORE, it is hereby ordered and Wellman agrees to do the following:

1. Wellman shall submit to DNR Field Office 4, a plan for proper handling of its

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Zyglo dye and other industrial wastes to avoid future discharges of these wastes into the sanitary or storm sewers, within 30 days of the date the Director signs this administrative consent order; and

2. Wellman shall pay restitution for the resulting fish kill in the amount of \$7,035.04 within 30 days of the date the Director signs this administrative consent order; and

3. Wellman shall pay a penalty of \$7,500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$7,500.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Wellman was able to conserve time, effort and money by pumping the Zyglo dye down the sewer system rather than properly storing and disposing of the waste. Based on the above considerations, \$500.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Multiple rule or statutory provisions were violated including the reduced efficiency of a treatment works facility from a prohibited discharge and reduction of water quality resulting in a substantial fish kill. Based on the above considerations, \$2,000.00 is assessed for the prohibited discharge violation and \$2,000.00 is assessed for the general water quality violations for a total of \$4,000.00 assessed for this factor.

Culpability – Wellman has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that the facility's conduct is subject to DNR's rules.

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Additionally, Wellman should have a plan for the proper disposal of industrial wastes. Based on the above considerations, \$5,000.00 is assessed for this factor.


VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Wellman. For that reason, Wellman waives the right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

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RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 27 day of
February, 2008.


For WELLMAN DYNAMICS CORP.

Dated this 15 day of
Feb., 2008.

88-001-002; Kelli Book; Field Office 4; Dennis Ostwinkle; EPA; I.C.1 and I.C.6.a